

Notice of Allowability

Application No.

10/634,331

Examiner

Ja-Na Hines

Applicant(s)

POLITO ET AL.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to April 18, 2007.
2. ☒ The allowed claim(s) is/are 98,99, 101-106, 117-121 (renumbered as 1-13).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

Amendments

1. The amendments of have been entered. Claims 98, 117 and 119-120 have been amended. Claims 1-97 and 100 have been canceled. Claims 107-116 are withdrawn. Claim 121 is newly added. Claims 98-99, 101-106 and 117-121 are under consideration.

EXAMINER'S AMENDMENT

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Suman Mirmira on May 1, 2007.

The application has been amended as follows:

Claims 107-116 have been cancelled.

Withdrawal of Rejections

3. The following rejections have been withdrawn in view of applicants' amendments and arguments:

- a) The written rejection of claims 119-120 under 35 U.S.C. 112, first paragraph;
- b) The rejection of claim 117 under 35 U.S.C. 112, second paragraph; and
- c) The rejection of claims 98, 99 and 101-106 under 35 U.S.C. 102(b) as being anticipated by Zweig (US Patent 5,554,531).

Allowable Subject Matter

4. Claims 98-99, 101-106 and 117-121 are free of the prior art. There is no prior art that teach or suggest an apparatus comprising an autostart means further comprising a capacitance sensor that senses a change in capacitance when sample or buffer is applied to the test strip and a means for regulating voltage across the capacitance sensor. The closet prior art is Zweig et al., (US Patent 5,554,531) who teach an apparatus comprising a housing and an autostart means, further comprising a resistance sensor. Zweig et al., do not teach or suggest an apparatus comprising an autostart means further comprising a capacitance sensor that senses a change in capacitance when sample or buffer is applied to the test strip. Sasao (US Patent 5,049,826) teaches away from detecting capacitance due to unstable electrostatic capacitance reading that result in erroneous detection results. Therefore, Sasao does

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not teach or suggest an apparatus comprising an autostart means further comprising a capacitance sensor that senses a change in capacitance.

5. Claims 98-99, 101-106 and 117-121 are allowed.

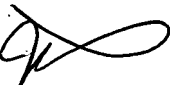
Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ja-Na Hines whose telephone number is 571-272-0859. The examiner can normally be reached on Monday-Thursday and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Jeffery Siew, can be reached on 571-272-0787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ja-Na Hines
May 1, 2007



JEFFREY SIEW
SUPERVISORY PATENT EXAMINER